IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 01 (M/S) of 2001

U.P. Jal Nigam through its Executive Engineer, (Addl. Project Division) 153-154 Indira Nagar, Dehradun. ....Petitioner

Vs

1. IIIrd Additional Civil Judge, Dehradun.
2. M/s Manohar Singh Verma and Surendra Pal Singh through its sole Proprietor Sri Surendra Pal Singh R/o Old Post Office Building, Pilkhawa, Ghaziabad. .....Respondents

Sri Anil Dabral, Advocate holding brief of Sri D.S. Patni, learned counsel for the petitioner.
Sri K.N. Joshi, learned counsel for the respondent No.2.
Sri Gopal Narain Srivastava, learned brief holder for the respondent No.1.

Hon'ble B.S. Verma, J.

Heard Sri Anil Dabral, Advocate, holding brief of Sri D.S. Patni, learned counsel for the petitioner, Sri K.N. Joshi, learned counsel for the respondent No.2 and Sri Gopal Narain Srivastava, learned brief holder for the respondent No.1. Admit.

The petitioner has filed the present writ petition with a prayer to issue a writ order or direction in the nature of certiorari quashing the order dated 5-1-2001 passed by respondent No.1 in Misc. Case No.95 of 2000, Manohar Singh Verma Vs. U.P. Jal Nigam, whereby, the order was passed by the IIIrd Additional Civil Judge (Senior Division) Dehradun and the notices were issued to the respondents and it was provided that in the meantime, the petitioner are restrained not to change the nature of construction and not to carry out the additional construction.

Brief facts giving rise to the present writ petition are that the tender for construction of 2500 KL capacity overhead tank at Parade Ground, Dehradun were invited on 19-7-1991 by the petitioner. The tender of the respondent No.2 was lowest and the contract was

accordingly given by the petitioner to respondent No.2. An agreement No.7/SF/91-92 was executed between the petitioner and the respondent No.2 on 4-9-1991. The date of starting the work was 20-9-1991 and time for completion of the work was 15 months i.e by 19-12-1992 but the respondent no.2 has not completed the work within the stipulated period.

The application was filed by the respondent No.2 before the Civil Judge (Senior Division), Dehradun to appoint the Arbitrator. The Arbitrator was appointed by the Court vide order dated 8-11-1996 and the arbitrator was directed to decide the dispute and differences arisen between the parties and it was further directed to file the award within three months from the date of judgment. The award was assailed by the U.P. Jal Nigam under Section 30/33 of the Arbitration Act , 1940 which was registered as Misc. Case No.40/97, U.P. Jal Nigam Vs. M/s Manohar Singh Verma and others. The learned Ist Additional Civil Judge, Dehradun had accepted the objections and set aside the award, which was made by arbitrator in favour of the Contractor.

Thereafter, the petitioner has invited fresh tenders and the fresh tender was given to M/s Construction Care vide order dated 17-7-2000. The new contractor had started the work on 30-9-2000 then the respondent No.2 had filed an application under Section 41 B of the Arbitration Act before the Civil Judge (Senior Division), Dehradun on 5-1-2001. The Civil Judge (Senior Division), Dehradun passed ad interim order in favour of the respondent No.2 without hearing the petitioner. Aggrieved by the order impugned, the petitioner has come up before this Court.

It is pertinent to mention here that it is not disputed that the award has been set aside and an order passed was passed without hearing to the petitioner.

Section 41B of the Arbitration Act, 1940 provides as under:-

"Procedure and powers of Court. – Subject to the provisions of this Act and of rules made thereunder:-

(b) the Courts shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, an in relation to, any proceedings before the Court."

Sri K.N. Joshi, learned counsel for the respondent No.2 has submitted that the respondent No.2 has filed review petition before the Civil Judge (Senior Division), Dehradun, which is still pending. I am not impressed by the arguments of the learned counsel for the respondent No.2.

In view of the above fact that the impugned order dated 5.1.2001 suffer from manifest error of law and accordingly set aside. However, it is made clear if the review application is pending before the Civil Judge (Senior Division), Dehradun, the respondent No.2 may purpose his application as per law.

With the above facts, the writ petition is allowed. No order as to costs.

All applications stands disposed of accordingly.

(B.S. Verma, J.)

Dated:-30-4-2007

M.K.